IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9299 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARISING SUKHSING VAJIR

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR UDAY BHATT Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 12/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of an order of detention dated 7.7.2000 in respect of petitioner passed by the respondent no. 1 in respect to detenu in exercise

of his powers conferred on him under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the Act').

2. As per the papers of the grounds of detention, the detenu is a 'bootlegger' within the meaning of sec. 2(b) of the Act, and that his activities are prejudicial to the maintenance of public order. Before passing of the order of detention, to arrive at a subjective satisfaction, the detaining authority has placed reliance on only one prohibiton case registered in Prohibition Station (Western Region) on 3.7.2000. The detaining authority has also placed reliance on the statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under sec. 9(2) of the Act. As per the papers, said statements were recorded on 4.7.2000 and 5.7.2000, respectively and both the statements were verified on 6.7.2000 and on the very next day i.e. on 7.7.2000 the order of detention came to be passed which is challenged in this petition.

3. Though rule has been served on all the respondents, each of them has not filed affidavit-in-reply controverting the grounds stated in memo of this petition.

4. Ms. DR Kachhavah learned advocate for the petitioner has argued that the detaining authority has claimed privilege under sec. 9(2) of the Act wrongly and not according to law because he verified the statements of anonymous witnesses on 6.7.2000 and on the very next day he passed an order of the detention. She has cited the authority of Kalidas Chandubhai Kahar vs. State of Gujarat and Ors., reported in 1993(2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under sec. 9(2) of the Act. Looking to the facts and circumstances of this case, it squarely falls within the four corners of the said case of Kalidas (supra). In view of this, the order of detention is bad in law and illegal and it requires to be quashed and set aside.

5. In view of what is stated hereinabove, this petition is allowed. The impugned order of detention dated 7.7.2000 passed by respondent no. 1 in respect of detenu is set aside. The detenu is ordered to be released forthwith if he is not required to be detained in any custody for any criminal case or proceedings. Rule is made absolute. Direct service is permitted.

(H.H. MEHTA, J.)

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